

**§ 15A-153. Effect of expunction; prohibited practices by employers, educational institutions, agencies of State and local governments.**

(a) Purpose. – The purpose of this section is to clear the public record of any entry of any arrest, criminal charge, or criminal conviction that has been expunged so that (i) the person who is entitled to and obtains the expunction may omit reference to the charges or convictions to potential employers and others and (ii) a records check for prior arrests and convictions will not disclose the expunged entries. Nothing in this section shall be construed to prohibit an employer from asking a job applicant about criminal charges or convictions that have not been expunged and are part of the public record.

(b) [Nondisclosure Protected. –] No person as to whom an order of expunction has been entered pursuant to this Article shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge any expunged arrest, apprehension, charge, indictment, information, trial, or conviction in response to any inquiry made of him or her for any purpose other than as provided in subsection (e) of this section.

(c) Employer or Educational Institution Inquiry Regarding Disclosure of Expunged Arrest, Criminal Charge, or Conviction. – An employer or educational institution shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest, criminal charge, or criminal conviction of the applicant that has been expunged and shall not knowingly and willingly inquire about any arrest, charge, or conviction that they know to have been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning arrests, charges, or convictions that have been expunged. This subsection does not apply to State or local law enforcement agencies authorized pursuant to G.S. 15A-151 to obtain confidential information for employment purposes.

(d) State or Local Government Agency, Official, and Employee Inquiry Regarding Disclosure of Expunged Arrest, Criminal Charge, or Conviction. – Agencies, officials, and employees of the State and local governments who request disclosure of information concerning any arrest, criminal charge, or criminal conviction of the applicant shall first advise the applicant that State law allows the applicant to not refer to any arrest, charge, or conviction that has been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning charges or convictions that have been expunged. Such application shall not be denied solely because of the applicant's refusal or failure to disclose information concerning any arrest, criminal charge, or criminal conviction of the applicant that has been expunged.

(e) [Exceptions. –] The provisions of subsection (d) of this section do not apply to any applicant or licensee seeking or holding any certification issued by the North Carolina Criminal Justice Education and Training Standards Commission pursuant to Article 1 of Chapter 17C of the General Statutes or the North Carolina Sheriffs Education and Training Standards Commission pursuant to Chapter 17E of the General Statutes:

- (1) Convictions expunged pursuant to G.S. 15A-145.4. – Persons pursuing certification under the provisions of Article 1 of Chapter 17C or 17E of the General Statutes shall disclose any and all felony convictions to the certifying Commission regardless of whether or not the felony convictions were expunged pursuant to the provisions of G.S. 15A-145.4.
- (2) Convictions expunged pursuant to G.S. 15A-145.5. – Persons pursuing certification under the provisions of Article 1 of Chapter 17C or 17E of the General Statutes shall disclose any and all convictions to the certifying Commission regardless of whether or not the convictions were expunged pursuant to the provisions of G.S. 15A-145.5.

(f) (See note) Penalty for Violation. – Upon investigation by the Commissioner of Labor or the Commissioner's authorized representative, any employer found to be in violation of subsection (c) of this section shall be issued a written warning for a first violation and shall be subject to a civil penalty of up to five hundred dollars (\$500.00) for each additional violation occurring after receipt of the written warning. In determining the amount of any penalty ordered under authority of this section, the Commissioner shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person being charged, the gravity of the violation, the good faith of the person, and the record of previous violations. The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination in which event the final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act. The Commissioner of Labor may adopt, modify, or revoke such rules as are necessary for carrying out the provisions of this subsection.

Nothing in this section shall be construed to create a private cause of action against any employer or its agents or employees, any educational institutions or their agents or employees, or any State or local government agencies, officials, or employees. (2013-53, s. 3; 2018-5, s. 17.1(a).)